

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

Commenter A: Liz Royer, Executive Director; Wayne Graham, Wastewater Specialist; Elizabeth Walker, Wastewater Specialist - VT Rural Water Association

Comment 1: *The 2018 EPA Pretreatment Audit found significant deficiencies, and we understand it would seem to make sense to pass certain responsibilities of pretreatment onto the wastewater facilities. Unfortunately, communities in Vermont have insufficient funding to cover the costs of pretreatment, such as staffing and equipment. In addition, we expect to see tax revenues that fund wastewater facilities decline due to the economic impact of COVID-19. This will make it harder for facilities to cover their current operations, much less add new responsibilities like pretreatment.*

It would not be fair for municipalities to increase rates for regular customers in order to subsidize industry use. But if a community charges the industries to pay for pretreatment, the process could become even more politicized than it is now. We currently have issues with some managers not wanting to push an industry too hard with hookup fees and surcharges, for fear this would cause the business to relocate, causing the town to lose tax revenue and jobs.

In addition to funding concerns, many wastewater facilities in Vermont are already understaffed. This is due both to tight budgets and the difficulty of finding people qualified to become licensed operators. The added responsibility of managing a pretreatment program would require increased staffing and more training, and this is not feasible for many of Vermont's wastewater facilities.

For these reasons, we feel that the State of Vermont should continue the role of operating and managing the pretreatment program. The State does receive pretreatment permit fees and can apply for federal grants to fund this program. As stated on page 5 of the Draft Vermont Pretreatment Program Strategy, "administering the Program at the state level, given the State's expertise in permitting, inspections, wastewater streams, associated with various industrial sectors, pretreatment regulations, and compliance and enforcement," makes sense. We agree with this statement and do not feel that it is fair for municipal wastewater facilities to be burdened with the costs and responsibilities of managing a pretreatment program.

Response: DEC is not requesting POTWs to develop and manage their own pretreatment programs. DEC is retaining its status as control authority, which means it will be implementing and enforcing pretreatment requirements on behalf of all POTWs across the state (unless the POTW requests to develop its own Program – in which case this would be accommodated through a memorandum of understanding). DEC is asking POTWs to perform support tasks to help the State's Pretreatment Program function at a level where it can implement a better, more effective, and more protective program for POTWs and VT's surface waters, while satisfying its federal pretreatment program requirements.

DEC's proposed support tasks are either existing NPDES permit requirements or most efficiently performed at the POTW level due to its proximity to the industrial user. Approximately 17 out of 24 (71%) POTWs who participated in DEC's stakeholder meeting and survey were willing to implement support tasks.

The fundamental basis for DEC's approach is (1) consistent identification and classification of industrial users, (2) clear delineation between local and state jurisdiction, (3) the development of legally enforceable, technically based conditions to protect POTWs, the quality of their residuals, and VT's receiving waters, and (4) consistent regulation and requirements for industrial users across the state. Part of DEC's pretreatment goals are also to assist municipalities by encouraging good WWTF operation and management through educating POTWs on the importance of:

- Identifying and tracking the industrial users connected to the WWTF;
- Understanding the types and volumes of pollutants being introduced to the WWTF;
- Understanding the WWTF's capacity to treat incoming pollutants; and
- Knowing the amount of reserve capacity remaining to accommodate community growth while maintaining proper operations.

The specific tasks DEC is asking of POTWs includes:

1. Tracking and reporting on new or expanding industrial users;
2. Development and implementation of a sufficient sewer use ordinance;
3. Supporting the development of technically based local limits (TBLLs); and
4. Annual independent compliance sampling of significant industrial users (SIUs).

Based on comments received on the draft strategy, DEC has struck the proposal to request POTWs to perform inspections.

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

DEC recognizes that POTWs across the state have varying levels of capacity, and implementation of the proposed support tasks will result in costs to some municipalities. DEC's approach for determining when pretreatment support tasks are required pivots off the concept that pretreatment is not a "one-size-fits-all" approach. DEC will propose the criteria it will utilize to determine when support tasks are required with the issuance of a draft rule. DEC's criteria will consider the POTW's capacity, size of industrial user base, and pretreatment needs to ensure protection of its operations, residuals management, and receiving waters. Prior to rule proposal, DEC will reach out to stakeholders to obtain input on the development of these implementation criteria.

Tracking and reporting on new or expanding industrial users (Task 1) and the development and implementation of a sufficient sewer use ordinance (Task 2) are currently required of POTWs via existing state statute, federal regulation, state regulation, and/or NPDES permit requirements. Therefore, these are not new requirements for a POTW, and compliance with these existing conditions is required regardless of their applicability to the pretreatment program. DEC will take this opportunity to define how these existing requirements should be implemented. To facilitate this, DEC will develop a framework, templates, standards, and provide guidance and training on how to comply with both of these existing requirements. Specific training and templates will be developed for identifying and tracking industrial users and developing a sufficient sewer use ordinance. DEC will consult stakeholders for input on the development of these materials and work closely with its partners (Vermont Rural Water Association, Green Mountain Water and Environment Association, Vermont League of Cities and Towns, etc.) to assist POTWs with compliance.

Supporting the development of TBLLs (Task 3) will include for all POTWs at a minimum (1) establishing a design capacity for conventional pollutants, (2) issuing allocations for certain industrial users which have the potential to discharge significant amounts of conventional pollutants, and (3) tracking issued allocations against design capacity to determine remaining reserve capacity. This is critical for DEC to permit industries that have the potential to discharge high-strength waste or excessive conventional pollutants, because the basis of its conventional pollutant permit limits relies on allocations and sufficient reserve capacity. The requirement for determining design criteria is existing and has been carried out through the Department's Basis of Final Design process. The requirement for issuing and tracking allocations would be a "new" responsibility for POTWs. However, DEC does not anticipate the need for additional POTW staff to be obtained to develop and issue allocations for conventional pollutants. DEC will provide standards and guidance on when allocations are required as part of the draft rule proposal. DEC will also consult stakeholders during the development of this approach and associated training.

DEC is proposing that some POTWs may need to support the development of TBLLs for nonconventional pollutants, such as metals, nutrients, and other toxics. The purpose of this requirement is to support the DEC's development of TBLLs for the protection of residuals quality, receiving waters, WWTF operations, and worker health and safety. DEC will define the need for local limits by identifying specific pollutants of concern through evaluation of the industrial users connected to the POTW and site-specific needs of the individual POTW. DEC will propose criteria for determining when TBLLs are required with the draft rule. However, the criteria will likely consider: operational and/or upset events at the POTW; POTW treatment technologies; detections in priority pollutant scans; POTW residuals monitoring data and disposal method; effluent quality and exceedances of NPDES permit limits; pollutants identified as causing or contributing to reasonable potential; pollutants associated with TMDLs; and specific pollutants based on volume and quality of wastewater introduced by industrial users connected to WWTF.

DEC's intention is only to require the development of TBLLs when it is necessary to limit metals, certain nutrients, or other toxics from industrial users to protect receiving waters, residuals quality, WWTF operations, and/or worker health and safety. Considering DEC's draft criteria and current industrial user base, it is not anticipated that the majority of POTWs will need to perform these analyses due to the limited number of industrial users that discharge metals or other toxic materials. With respect to nutrients, DEC is considering alternative strategies to implement local limits for total phosphorus and total nitrogen and will request input from stakeholders.

When a POTW is required to support the development of TBLLs, there will be costs associated with sampling to determine initial background levels of pollutants of concern, POTW removal efficiencies, and ongoing evaluation to determine the accuracy of limits. DEC requires this data to develop Maximum Allowable Headworks Loadings and Maximum Allowable Industrial Loadings for pollutants of concern. DEC will investigate and report out on available funding mechanisms to support a POTW's needs of developing local limits.

The final proposed pretreatment task is the annual independent compliance sampling of SIUs (Task 4). Approximately 15 out of 24 (63%) POTWs who participated in DEC's stakeholder meeting and survey were willing to implement this support task. DEC and many

POTWs also agreed during stakeholder outreach that POTWs are in the best position to perform this sampling given their proximity to the industrial user. In addition, some POTWs have existing sampling equipment to perform this task.

During rule development DEC will propose criteria used to determine whether a POTW is required to perform annual SIU sampling. DEC's goal is to accommodate those POTWs that have multiple SIUs, have existing portable automatic sampling equipment, and are currently performing collection system sampling to limit new costs. For POTWs that do not have portable sampling equipment, DEC will explore ways to provide or fund this equipment through an equipment sharing program or through grants and/or contract monies. DEC is also actively exploring options for funding the cost of annual SIU sampling analysis.

DEC is also in support of fair and consistent regulation of industrial users to facilitate proper wastewater management by all industrial users, and to discourage "town shopping" and regular sewer users subsidizing industry use. Therefore, DEC will consider incorporating specific industrial user requirements and responsibilities within its draft pretreatment rule. Examples of these requirements include facility operational requirements, controls for slug discharges, requirements for pollution prevention and high-strength waste management, industry sector specific requirements, wastewater monitoring and sampling requirements, etc. In addition, DEC will consider incorporating draft rules to support POTWs' needs for regulating industrial users that fall outside state jurisdiction. For example, DEC will consider rules to support the POTWs' implementation of a fats, oils, and grease program.

In response to this comment DEC will follow-up on the following tasks:

1. Continue to explore available funding mechanisms to support the implementation of support tasks by POTWs;
2. Consult stakeholders for input during the development and implementation of the four pretreatment tasks for the draft rule; and
3. Consult stakeholders and partners on the development of templates, guidance, and trainings for POTWs to implement required pretreatment support tasks.

Commenter B: Randy Bean, Owner, RAB Consulting & Services LLC

Comment 1: *The State of Vermont became a delegated "Pretreatment State" due to the number of small municipalities in the state and wide range of industries which can adversely impact POTWs. ANR has historically administered the Pretreatment Program to protect POTW operations, sludge quality, and receiving water quality in a cost effective and consistent manner. Plus to assist municipalities and industries by ensuring that properly trained and knowledgeable staff could oversee these discharges and accomplish these tasks in a consistent from a "central location". This proposed Strategy appears to eliminate this much of this "central administration" knowledge and consistency and make multiple municipalities absorb many of these tasks. How will ANR ensure that rule interpretations, inspections, and sampling done by POTWs are done in a consistent manner throughout the state?*

Response 1: DEC is remaining a delegated "Pretreatment State" in accordance with 40 C.F.R. § 403.10(e), and DEC continues to administer a program with goals of protecting POTW operations, sludge quality, and receiving water quality in a cost effective and consistent manner.

The vast majority of the pretreatment program, including permitting, inspections, most industrial user sampling, review of process wastewater discharges from new or expanding industrial users (determinations), assistance to municipalities on management of industrial discharges, and compliance and enforcement will continue to be administered by DEC from its central location.

DEC is proposing that municipalities perform four tasks (see tasks outlined in DEC's response to Commenter A) to support DEC's implementation of the pretreatment program. The proposed pretreatment tasks are either existing POTW NPDES permit requirements, or activities that are best and most efficiently carried out by the POTW due to their proximity to the industrial user. For "new" tasks, DEC will develop criteria to determine which POTWs are required to implement support tasks. These criteria will consider the POTW's capacity, size of industrial user base, and pretreatment needs to ensure protection of its operations, residuals management, and receiving waters. Please refer to DEC's response to Comment 1 from Commenter A for more information on DEC's proposed criteria.

The proposed pretreatment tasks will not affect the knowledge or consistency of DEC's program. The fundamental basis for DEC's approach is (1) consistent identification and classification of industrial users, (2) clear delineation between local and state jurisdiction, (3) the development of legally enforceable, technically based conditions to protect POTWs, the quality of their residuals, and VT's receiving waters, and (4) consistent regulation and requirements for industrial users across the state.

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

DEC will provide templates, training, and guidance to assist POTWs with the implementation of pretreatment tasks and to ensure requirements are implemented consistently and meet DEC standards. For example, any POTWs performing sampling will be trained on proper sampling and collection technique and proper quality assurance and control. In addition, a form will be required of POTWs to document implementation of proper sampling method. For identification and tracking of industrial users, DEC will provide training to POTWs on methods of surveying industrial users, criteria for classifying industrial users, and templates for tracking existing, new, and expanding industrial users. DEC will develop a training and model sewer use ordinance to assist municipalities in the development and adoption of a sufficient sewer use ordinance. Finally, DEC will provide assistance and guidance to POTWs on the procedures and importance of issuing allocations and tracking reserve capacity. For POTWs required to develop TBLLs for nonconventional pollutants, DEC will prescribe a sampling plan and guidance on how to perform representative WWTF sampling for the purpose of determining removal efficiencies.

Comment 2: *While the overall number of industries having Pretreatment Discharge Permits in Vermont has not significantly changed in many years, the type of industries being regulated by the Pretreatment Program has. Many industries that had Pretreatment Permits due to heavy metals and toxic pollutants in their discharges have terminated (i.e. Chouinards, Cabot Hosiery, Kennametal, etc.). However, breweries and food processing industries needing pretreatment discharge permits are increasing due to their high discharges of excessive conventional pollutants and nutrients into POTWs. In addition, there a number of these types of industries which have expanded and now have discharges that are adversely impacting POTWs and need to be regulated by Pretreatment Permits. However, this Strategy does not address this changing regulated community and the associated pollutant issues.*

Comment 3: *The Strategy does not incorporate any aspects of pollution prevention. Pollution prevention (such as waste separation, using alternative materials, reuse, recycling etc) should be emphasized and the requirement for industries to implement pollution prevention mandate as part of the Strategy and the proposed Pretreatment Rule.*

Response 2 & 3: DEC recognizes the growth in the food and beverage industrial sector, and the need for its proper wastewater management. The strategy is a response to EPA's audit findings on several specific elements of the state's program. Therefore, the strategy is not an appropriate place to address the specific mechanisms DEC currently uses and proposes to use to regulate discharges from the food and beverage sectors.

That said, the strategy addresses the control of conventional pollutants through the program's need to develop TBLLs. DEC will ask POTWs to track industrial users (existing requirement), issue and track allocations for industries that have the potential to discharge excessive conventional pollutants, and determine reserve capacity. This will provide a basis for DEC to identify, classify, and regulate SIUs through its permitting program. This process was not happening consistently in the past, and DEC is proposing to codify this process in its draft rule. With respect to nutrients, DEC will consult stakeholders to obtain feedback on its proposed implementation of local limits for discharges of excessive nutrients.

DEC's rule will also include conditions applicable to specific industrial sectors, such as the food and beverage industries. These conditions will include (but are not limited to) facility operational requirements, controls for slug discharges, and requirements for pollution prevention and high-strength waste management.

Pretreatment is an area ripe with pollution prevention opportunities. DEC is interested in continuing to utilize resources from its Environmental Assistance Office to implement pollution prevention at industrial facilities. Further, DEC is interested in expanding the capacity of the Pretreatment Program's pollution prevention services. For example, the Pretreatment Program through DEC applied for an EPA P2 Grant to perform source identification and reduction of PFAS within industrial wastewater discharges.

Comment 4: *While not discussed, the Strategy clearly indicates that POTWs will need to absorb significant costs for staff, equipment, sampling, training, consultants, etc. to assist ANR in implementing the Pretreatment Program. The actual POTW costs and the cost effectiveness to implement Pretreatment Program, as proposed in this document should be clearly addressed in this Strategy. POTWs are on limited budgets and most do not currently have the equipment, trained staff, and other resources necessary to undertake the requirements proposed in this Strategy. Given the current economic situation it does not appear to be fiscally responsible for ANR to require citizens in multiple local municipalities to expend monies for similar materials, staff and training that could be provided at the "state level".*

Comment 5: *The Strategy does not discuss any avenues for ANR to obtain additional monies for implementing the Pretreatment Program. Since ANR is a delegated by EPA to implement the federal pretreatment program in Vermont, ANR should aggressively seek to obtain additional monies via the "Performance Partnership" relationship with EPA to administer the Program. Also, the*

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

Strategy should discuss other funding mechanisms (grants, NGO assistance, etc.) that ANR can pursue to assist in implementing the Program. This issue becomes much more critical since the Strategy proposes to require a substantial amount of costs be absorbed by POTWs. POTWs do not have the same funding mechanisms or the ability to obtain funding from additional sources as ANR and if ANR is proposing to require POTWs to absorb costs to implement the Pretreatment Program ANR must be willing to expend administrative time and resources to help offset these cost at POTWs.

Response 4 & 5: The strategy is a response to EPA's audit findings on several specific elements of the state's program. Therefore, the strategy is not an appropriate document to identify individual costs to POTWs. However, during draft rule development costs and implications for POTWs will be clearly identified as part of the rulemaking discussions.

DEC's planned approach is not "one-size-fits-all". DEC recognizes that POTWs across the state have varying levels of capacity, and implementation of the proposed support tasks will result in costs to some municipalities. DEC will propose the criteria it will utilize to determine when support tasks are required with the issuance of a draft rule. In general, DEC's criteria will consider the POTW's capacity, size of industrial user base, and pretreatment needs to ensure protection of its operations, residuals management, and receiving waters. More information on DEC's proposed criteria is outlined in the response to Commenter A.

DEC is proposing four POTW requirements which it deems necessary to support the implementation of the state's pretreatment program. The majority of support tasks are existing NPDES permit requirements. DEC will provide templates, guidance, and training for POTWs to comply with these existing requirements. Annual sampling of SIUs and supporting the development of TBLLs are newly proposed and will result in some costs associated with sampling and POTW staff time. However, DEC is working to implement an approach that will not require POTWs to obtain additional staff or consulting services to implement these proposed requirements.

For annual sampling of SIUs, DEC's goal is to develop criteria that accommodate POTWs that have multiple SIUs, have existing portable automatic sampling equipment, and are currently performing collection system sampling. Costs associated with this requirement include the cost of sampling analysis and portable sampler (for POTWs that do not already have portable sampling equipment). However, due to DEC's implementation criteria and goals, it anticipates a limited need for POTWs to purchase sampling equipment.

DEC is actively exploring options for funding the cost of annual SIU sampling analyses. In addition, DEC is also exploring ways to provide or fund portable sampling equipment through an equipment sharing program, or through grants and/or contract monies. DEC hopes to notify POTWs of available funding mechanisms with the release of the draft rule.

With respect to TBLLs, DEC's intention is only to require the development of TBLLs when DEC determines it is necessary to limit metals, certain nutrients, or other toxics from industrial users to protect receiving waters, residuals quality, WWTF operations, and/or worker health and safety. Considering DEC's draft criteria and current industrial user base, it is not anticipated that the majority of POTWs will need to perform these analyses due to the limited number of industrial users that discharge metals or other toxic materials. With respect to nutrients, DEC is considering alternative strategies to implement local limits for total phosphorus and total nitrogen.

When a POTW is required to support the development of TBLLs, there will be costs associated with sampling to determine initial background levels of pollutants of concern, POTW removal efficiencies, and ongoing evaluation to determine the accuracy of limits. DEC requires this data to develop Maximum Allowable Headworks Loadings and Maximum Allowable Industrial Loadings for pollutants of concern. DEC will explore whether the initial development of TBLLs is possibly eligible for funding as a planning project under the Clean Water State Revolving Fund. DEC will investigate other available funding mechanisms to support POTW's needs of developing local limits. DEC does not anticipate the need for consulting services for POTWs to perform the sampling to support DEC's calculation of TBLLs.

Comment 6: *ANR receives permit and operating fees from entities holding Pretreatment Discharge Permits. Currently what parts and what percentage of the Pretreatment Program operations do these fees cover and if POTWs are required to implement a portion of the Pretreatment Program will these monies be passed to the POTWs?*

Response 6: DEC permit and operating fees do not currently cover the cost of DEC's pretreatment program.

To assist POTWs with costs associated with the implementation of pretreatment support tasks, DEC will identify viable funding sources, including opportunities through the Clean Water State Revolving Fund and other loan or grant programs, equipment

sharing programs, and providing financial support through contracts. Some municipalities already receive fees from their industrial users, and also the benefit of taxes from these facilities, which could potentially cover any added costs to these municipalities.

Comment 7: *Line 59 & 101: The requirement for a POTW to develop and implement an acceptable Sewer Use Ordinance has been a condition of the POTW's NPDES Discharge Permit for many decades. With respect to reviewing and approving the Sewer Use Ordinances, ANR had previously worked with municipalities as part of the FOME (Financial Operational & Management Exercise) Program to assist in the development and approval of Sewer Use Ordinances. ANR discontinued that Program several years ago. Also, ANR had previously reviewed updated Sewer Use Ordinances as part of the new/updated POTW Operations & Maintenance (O&M) manuals that are required as POTWs are upgraded or expanded. As part of this Strategy to improve and approve Sewer Use Ordinances, will ANR resume these activities? Also, will ANR be providing guidance and technical assistance in developing and amending Ordinances?*

Response 7: DEC will evaluate the existing requirements for sewer use ordinances, determine any necessary new or revised conditions, and codify requirements into the draft rule. DEC envisions submission and approval of the ordinance required through a condition of the NPDES permit. DEC will also consider requesting an updated ordinance with O&M manuals when POTWs are upgraded or expanded.

DEC plans to provide updated guidance, templates, technical assistance, and training to POTWs in developing and/or amending ordinances. DEC plans to adopt a template ordinance for POTWs to reference or utilize. DEC will consult stakeholders for feedback during the development of these requirements and resources.

Comment 8: *Lines 66-68: Will POTWs that become delegated to implement their own Pretreatment Program be directly delegated by EPA and therefore exempt from the ANR Pretreatment Program or will these POTWs have a "sub-delegation" via ANR and not required to report directly to EPA?*

Response 8: POTWs will not be delegated by EPA to implement their own pretreatment program. For POTWs that want to voluntarily develop their own pretreatment program, DEC will establish the operating and reporting requirements with the POTW through a memorandum of understanding (MOU). The POTW would report on the program directly to DEC. This is a similar model employed in Nebraska, a fellow "Pretreatment State", and one that is recommended by EPA. The state will continue to administer the program for all other POTWs.

Comment 9: *Lines 69-74/Lines 110-108: There is no authority in statute and the Vermont Water Pollution Control Permit Regulations to require POTW's to conduct independent sampling and inspections on behalf of ANR to enable ANR to comply with EPA requirements applicable to the ANR federally delegated Pretreatment Program. As the delegated entity ANR is mandated to complete those tasks by either using its Program staff or hiring independent contractors to complete those tasks on behalf of ANR. At this point in time POTWs are not obligated to train their staff, purchase new equipment, and to utilize their resources to fulfill ANR's federal requirements. Forcing this requirement on to POTWs will require extensive and controversial legal proceedings and will require the significant expenditure of POTW monies to enable ANR to fulfill their obligation to EPA. If the new Pretreatment Rule mandates these tasks will ANR provide adequate financial assistance and training assistance to the POTWs to fulfill requirement?*

Comment 10: *Lines 69-74/Lines 110-108: Since the current the Pretreatment Program delegation agreement with EPA does not include POTWs conducting work in the Pretreatment Program on behalf of ANR, the Pretreatment Program delegation agreement with EPA will need to be formally amended. This activity will require extensive involvement from the Attorney General's office. Has the AG's office been notified of this Strategy? If so, what is their position?*

Comment 11: *Lines 69-74/Lines 110-108: Since the POTWs will not be a formally contracted representative of ANR or EPA or formally delegated to implement a Pretreatment Program, how can sampling and inspections done by a POTW be utilized to legally fulfill a federal requirement?*

Response 9, 10, & 11: Current state statute, regulations, and delegation agreement with EPA do not prohibit DEC's ability to request POTWs to perform annual independent compliance sampling of SIUs.

DEC's proposed strategy and ANR's delegation agreement were reviewed with EPA Region 1 and EPA headquarters legal team. EPA agreed that the delegation agreement does not prohibit DEC from requiring annual SIU sampling of POTWs, so long as no barrier in state law exists.

As mentioned previously, DEC will investigate and report-out on opportunities for financial assistance to POTWs. In addition, DEC will work with its partners to provide high-quality training and resources to POTWs with the goal of assisting POTWs to meet the new requirements, while also providing assistance and education on management of WWTF capacity and discharges from industrial users.

Comment 12: *Lines 69-74/Lines 110-108: With respect to POTWs being required to develop technically based local limits, how does ANR expect to municipalities in Vermont to develop these limits when the following factors are considered. First, a significant portion of the existing industries with Pretreatment Permits discharge to "minor" POTWs (<1 mgd). Most of these small communities do not have the resources (staff or monies) or knowledge to develop these local limits without significant financial costs and technical assistance. Second, the since pretreatment "community" in Vermont encompasses a wide range of industries (food processing, metal platers, breweries, battery manufacturing, etc) how does ANR expect POTWs in Vermont to develop limits to address this wide range of discharges which have significantly different pollutants, are regulated by vastly different regulations, and have different impact on POTWs? Third, will this requirement be applicable to all POTWs or only POTWs which receive discharges from industries currently regulated by a Pretreatment Permit? Fourth, if a new industry which requires a Pretreatment Permit proposes to connect to a POTW which does not have local limits, will the connection of the industry be delayed until the POTW develops local limits?*

Response 12: DEC is required to determine whether or not POTWs require TBLLs. To implement this, DEC plans to take separate approaches for conventional pollutants and metals, certain toxics, and potentially nutrients.

For conventional pollutants, supporting the development of TBLLs will be required of all POTWs. This includes the POTW (1) establishing a design capacity for conventional pollutants, (2) issuing allocations for certain industrial users that have the potential to discharge significant amounts of conventional pollutants, and (3) tracking issued allocations against design capacity to determine remaining reserve capacity. This approach is consistent with what some communities in Vermont are currently doing. However, DEC plans to standardize and codify this process in rule.

This process is critical for DEC to permit industries that have the potential to discharge high-strength waste or excessive conventional pollutants because the basis of these local limits relies on allocations and sufficient reserve capacity. Further, the documentation of existing allocations and demonstration of sufficient reserve capacity is critical for DEC to justify the technical basis of the local limits.

The requirement for determining design criteria is existing and has been carried out through the Department's Basis of Final Design process. For the rule, DEC is considering allowing alternative methods of establishing design capacity for conventional pollutants if the original basis of design is outdated, exceeded, or no longer applicable to the facility.

The requirement for issuing and tracking allocations would be a "new" responsibility for POTWs. However, DEC does not anticipate the need for additional POTW staff to be obtained to develop and issue allocations for conventional pollutants. DEC will provide standards and guidance on when allocations are required as part of the draft rule proposal. DEC will also consult stakeholders during the development of this approach to ensure the process is appropriate for communities in VT.

DEC is proposing that some POTWs may need to support the development of TBLLs for nonconventional pollutants, such as metals, other toxics, and potentially nutrients. The purpose of this requirement is to support the DEC's development of TBLLs for the protection of residuals quality, receiving waters, WWTF operations, and worker health and safety. DEC will define the need for local limits by identifying specific pollutants of concern through evaluation of the industrial users connected to the POTW and site-specific needs of the individual POTW. DEC will propose their criteria for determining when TBLLs are required with the draft rule. However, the criteria will likely consider: operational and/or upset events at the POTW; POTW treatment technologies; detections in priority pollutant scans; POTW residuals disposal method and monitoring data; effluent quality and exceedances of NPDES permit limits; pollutants identified as causing or contributing to reasonable potential; pollutants associated with TMDLs; and specific pollutants based on volume and quality of wastewater introduced by industrial users connected to WWTF.

DEC's intention is to require the development of TBLLs when DEC determines it is necessary to limit metals, certain nutrients, or other toxics from industrial users to protect receiving waters, residuals quality, WWTF operations, and/or worker health and safety.

DEC's proposed approach to develop local limits for specific pollutants of concern uses methods presented in EPA's Local Limits Development Guidance. The proposed process is comprised of the following:

1. DEC will determine pollutants of concern using implementation criteria.

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

2. DEC will determine Allowable Headworks Loadings (AHL) for pollutants of concern to ensure desired residuals management method, to prevent exceedance of effluent limits, to prevent exceedance of water quality standards, and to prevent inhibition (using literature values).
3. DEC will calculate the Maximum Allowable Headworks Loadings based on the most stringent AHL.
4. DEC will calculate the Maximum Allowable Industrial Loadings (MAIL) using data provided by the POTW on background and residential contribution of the pollutant of concern.
5. Finally, DEC will allocate local limits to SIUs to ensure that the sum of the allocated loadings do not exceed the MAIL. Similar to conventional pollutants, allocations will be tracked and compared to the MAIL to determine reserve capacity.

When a POTW is required to support the development of TBLLs, there will be costs associated with sampling to determine initial background levels of pollutants of concern, POTW removal efficiencies, and ongoing evaluation to determine the accuracy of limits. DEC requires this data to perform its local limits analysis.

The initial development of TBLLs is possibly eligible for funding as a planning project under the Clean Water State Revolving Fund. DEC will investigate other available funding mechanisms to support POTWs' needs of developing local limits. DEC does not anticipate the need for POTWs to obtain consulting services to perform this sampling. In addition, consulting services will not be necessary for the local limits analysis because DEC will perform the TBLL calculations.

With respect to nutrients, DEC is considering alternative strategies to implement local limits for total phosphorus and total nitrogen. DEC will consult with stakeholders on its proposed approach.

The connection of an industry to a POTW that requires local limits will not be delayed. DEC will work with the POTW on the development and allocation of local limits. Permits of applicable industrial users will either be reopened or revised at renewal to incorporate allocations determined by the local limits development process. Compliance schedules will be incorporated into permits of facilities that cannot achieve effluent limits immediately upon permit issuance.

Comment 13: *Lines 69-74/Lines 110-108: Will the connection of a new industry which requires a Pretreatment Discharge Permit be delayed until a POTW has properly trained staff to inspect the industry and has purchased all the necessary equipment to sample the industry?*

Response 13: The connection of an industry to a POTW will not be delayed. The Department will perform all required inspections and sampling until the POTW is trained and required to perform annual SIU sampling in accordance with the corresponding condition in the POTW's NPDES permit. The permit condition will include compliance dates to establish the reporting requirements associated with annual sampling. Following adoption of this requirement in the pretreatment rule, and prior to incorporating the requirement in a POTW's NPDES permit, POTWs will be trained on independent compliance sampling and associated reporting requirements. As mentioned previously, DEC is also investigating methods to fund or share equipment and analysis cost.

Comment 14: *Lines 69-74/Lines 110-108: With respect to properly tracking reserve capacity and distributing allocations, additional influent pollutant sampling (more than once per month) will be necessary to derive accurate influent loadings. Will ANR be requiring all POTWs to increase influent sampling? If so, what frequency? Also, will ANR routinely review the influent loadings and remaining capacity and assist POTWs with tracking and managing that capacity?*

Response 14: Increased influent sampling will be considered to obtain sufficient influent data to assess variability and determine accurate influent loadings. In addition, DEC's routine review of influent loadings, remaining capacity, and distribution of allocations are necessary components of DEC's proposed framework for regulating conventional pollutants from industrial discharges.

As DEC develops its TBLLs approach for conventional pollutants, the necessary influent sampling frequency will be determined and proposed with draft rules. Stakeholders will be consulted for feedback on DEC's proposed approach prior to adopting into draft rules.

The proposed requirements for determining WWTF capacity, tracking reserve capacity, and issuing allocations will establish a basis for DEC to assist POTWs with proper utility and capacity management, in addition to providing a solid, legally defensible, technical basis for the implementation of its pretreatment permitting program.

Part of DEC's pretreatment goals are to assist municipalities by encouraging good WWTF operation and management through educating POTWs on the importance of:

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

- Identifying and tracking the industrial users connected to the WWTF;
- Understanding the types and volumes of pollutants being introduced to the WWTF;
- Understanding the WWTF's capacity to treat incoming pollutants; and
- Knowing the amount of reserve capacity remaining to accommodate community growth while maintaining proper operations.

Comment 15: Lines 69-74/Lines 110-108: With respect to identifying new and expanding users, based on the new permitting exemptions in the "Wastewater System and Potable Water Supply Rule effective April 12, 2019, ANR's initial regulatory involvement in tracking and regulating changes of uses or increased discharges from existing sources was eliminated. However no notification to the POTWs occurred of these exemptions.

Response 15: The Wastewater Program is aware of the modifications to the Wastewater System and Potable Water Supply Rule and its implications on POTWs ability to track industrial users. As part of the development of the pretreatment rule, the Wastewater Program will consult with the Drinking Water and Groundwater Protection Division to determine opportunities to correlate the two programs' requirements.

Comment 16: Lines 184-188: Based on my attendance at the stakeholder feedback meeting and follow-up discussions with multiple POTWs, it is my understanding that the majority of the POTWs are willing to help collect samples at SIUs collected via the SIUs sampler (split samples) on behalf of ANR. However nearly all the POTWs in Vermont do not have the necessary equipment (portable samplers and portable flow meters) or trained and available staff to conduct completely independent and representative sampling of SIU discharges into their collection system to comply with Pretreatment Discharge Permit requirements. It was my understanding that those discussions were based on the pretense of the POTWs assisting ANR "out of its current jam" – a "one time thing"- but not having the POTW be routinely responsible for ANRs implementation of the Pretreatment Program. With respect to mandating SIU sampling to POTWs via NPDES permits, according to preliminary discussions with former ANR long time legal staff, VT ANR does not currently have the legal authority under Title 10 Chapter 47 and the Vermont Water Pollution Permit Control Regulations to require a POTW (a 3rd party) regulated via an NPDES Permit issued by ANR to sample a SIU regulated under the terms and conditions of Pretreatment Discharge Permit issued by ANR. If ANR intends to make this a requirement of the new Pretreatment Rule, the Attorney General's office should be involved to provide an unbiased independent review of this requirement and ensure that ANR has the proper statutory and constitutional authority to implement this type of requirement. Will the Attorney General's office be a party to this rule making?

Response 16: Current state statute, regulations, and EPA delegation agreement allow DEC to request POTWs to perform annual independent compliance sampling of SIUs.

Commenter C: Gail C. Tiffany, WWTF Laboratory Director; Town of Bennington

Comment 1: State should make a list of what constitutes a SIU. I am not saying that municipalities aren't capable of identifying them on their own, but some categories may be slightly ambiguous and need some explanation (filling in that grey area).

Local POTWs could then identify those SIUs in their communities that met the State's requirement to permit -- and also include (1) those users who discharge more than 25,000 gallons/day excluding sanitary; (2) those users whose discharge equals or exceeds 5% of the POTWs design capacity; and (3) include those users that might potentially adversely affect the POTWs operations.

Comment 2: Once ""Comment 1"" is accomplished and the Local POTWs submit the list of potential SIUs in their community, the State would evaluate the list to see if a pretreatment permit was needed and/or if only a Slug Control Plan was needed.

Based on the above, the State would help the municipality establish local limits --- to be based on an updated ""basic sewer use ordinance"" established by the State.

Lots of municipalities are still using Sewer Use Ordinances that were made from guidance by the State in the 70's and 80's. Time to update :)

Comment 3: Okay -- now can the State create a "template" that the Local POTWs/municipalities can send to those SIUs in their community stating that they have been identified by "cite criteria" as a SIU and they need to apply for a State pre-treatment permit and/or submit a Slug Control Plan. Municipalities would include the updated Sewer Use Ordinance with letter. *** A Slug Control Plan would need to be submitted as part of need for permit.

Response 1, 2, & 3: DEC agrees that there is value in expanding the definition and guidance associated with SIU classification. DEC may adopt expanded criteria in its draft pretreatment rule.

For POTWs identifying and tracking industrial users, DEC will provide training to POTWs on potential methods of surveying industrial users, criteria for classifying industrial users, and templates for tracking existing, new, and expanding industrial users. DEC will be ultimately be responsible for determining whether or not the identified industrial users are significant (SIUs) and require permitting. However, this determination will be made in consultation with the municipality.

Slug discharge control plans are required to be incorporated into SIU permits where the industry has the reasonable potential to discharge slugs of high-strength or toxic wastewater to the POTW. In certain cases, DEC agrees that a slug discharge control plan in lieu of a pretreatment permit can be an effective tool for controlling industrial users that are not deemed significant. DEC plans to incorporate specific industrial user requirements and responsibilities within its draft pretreatment rule and will consider this concept during rule development.

Please refer to the responses to Commenter A and Comment 12 of Commenter B for a description of the process DEC proposes to use to develop local limits.

With respect to sewer use ordinances, DEC's intent is to ensure POTWs can carry out activities necessary to control and manage discharges from industrial users that DEC does not regulate (non-SIUs). In addition, the ordinance should allow POTWs to implement practices necessary for DEC to conduct its permitting program, such as establishing design capacity, issuing allocations, managing reserve capacity, and identifying and tracking industrial users.

Comment 4: *The SIUs would submit permit and/or Slug Control Plan to State. State would determine if administratively complete and send final permit to SUI and municipality. --- Personally I don't like the idea of amending 10 VSA 1263 and allowing municipalities to issue permits. I think permits should be issued by State to make sure they are in full accordance with EPA guidelines.*

Municipalities could act on behalf of State to ensure that conditions of the permits are in place (i.e., sampling measures; berms; etc.)

Response 4: Under current statute, DEC is unable to transfer its pretreatment permitting authority to a municipality without an amendment to 10 V.S.A. § 1263. DEC may ultimately seek amendment of the statute to accommodate POTWs who are interested in voluntarily developing their own pretreatment programs. Following such an amendment, pretreatment permitting could be incorporated into an MOU with any POTW to establish the bounds of the municipal program. DEC does not intend to require pretreatment permitting of any POTWs that do not wish to voluntarily take on the responsibility.

Comment 5: *SIUs would submit monthly or quarterly reports to the State in same manner that Local POTWs now submit their monthly/quarterly reports. Preferably an online system could be established that would alert both State and municipality when there is a non-compliance issue -- which could be immediately acted upon by representative of the municipality on behalf of the State.*

The State still retains enforcement control. The municipality is there to do some of the legwork for the State.

Comment 6: *The Local POTW would do annual inspections --- or more frequently if mandated by State. When feasible joint inspections could be made by the State with the municipality or at specific intervals (i.e., every three years; before permit renewal issued; etc.)*

Response 5 & 6: SIUs under a pretreatment permit will continue to report permit requirements directly to the state (and copy the POTW). Industrial users that are not regulated by the state should be tracked and managed directly by the POTW.

Based on stakeholder feedback, DEC has struck the proposed requirement for POTWs to perform annual SIU inspections.

Comment 7: *State and Local POTWs would establish a protocol to ensure permitting and compliance of future SIUs. This may be able to be accomplished by including the POTW in review of any new commercial/industrial entity and or change-of-use done by Municipal Development Review Boards.*

Municipalities should be instructed in how to calculate their reserve capacities so that they unintentionally take on more than their POTW can handle.

Response 7: The (1) development and adoption of a sufficient sewer use ordinance, (2) process for identifying and tracking industrial users, and (3) process for managing WWTF capacity through issuing allocations and maintaining reserve capacity may

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

involve an entity such as the municipality's Development Review Board. However, implementation of these processes will likely vary from community to community based on the municipality's government structure and operating procedures. Further challenges will be posed by communities with intermunicipal agreements. DEC will work with its partners to reach applicable municipal stakeholders (public works department, zoning/review boards, etc.) to ensure effective implementation of the proposed support tasks.

DEC plans to provide assistance and guidance to POTWs on the procedures and importance of issuing allocations and calculation of reserve capacity.

Comment 8: *This still leaves a lot of future work for the State, but I think with the proper guidance by the State there is no reason that municipalities/Local POTWs can't assist in being the ""local eyes"" for the State as well.*

By leaving the SIUs (commercial/industrial entities) responsible for submitting permit requirements to State and being responsible for their own sampling it alleviates pressure from the municipalities to coming up with standards, sampling equipment, etc. -- And by doing so probably ensures a better partnership with the State for doing some of the local inspection legwork in the future."

Response 8: The Department acknowledges this comment and refers to the preceding responses for more detail.

Commenter D: Chris Robinson, Water Quality Superintendent, Town of Shelburne

Thank you for the opportunity to comment on the VTDEC's pretreatment strategy to meet their EPA Pretreatment requirement. During the stakeholder meetings the Town of Shelburne approved of the State's intent to keep delegation of the pretreatment program. The Town understands the dilemma of insufficient funds and resources that the State is experiencing; however, municipalities are also feeling these same financial pressures. Therefore, the Town of Shelburne does not approve of the proposed list of POTW requirements in its entirety. Shelburne's comments are as follows:

Comment 1: *1. Identification of new and expanding industrial users – The Town does not have an issue with this.*

2. Development and implementation of a sufficient Sewer Use Ordinance – The Town does not have an issue with this.

3. Support for technically based local limits – The Town does not have an issue with this.

4. Independent compliance sampling of SIUs – The Town would support this measure if funding was available for the analysis. The Town is willing to contribute its time and resources if the State is willing to cover the cost of analysis. This is the type of "shared" approach the Town supports. Many municipalities may not have the resources to purchase a portable composite sampler. Perhaps the State could loan these to POTWs for use.

5. Inspections of SIUs – The Town is adamantly opposed to this recommendation. During the stakeholder meetings it appeared that there was consensus amongst POTWs that the State is best suited to conduct the inspections and conduct enforcement. This is primarily based on the fact that most POTW's do not have the expertise to conduct such inspections. In fact, the State even states this on Lines 120-123 of the proposed plan. It states "For most municipalities, DEC and stakeholders agree that it is more efficient and effective to administer the Program at the state level, given the state's expertise in permitting, inspections, wastewater streams..."

Response 1: DEC will explore viable methods to fund or provide financial support to POTWs for costs of annual SIU sampling prior to the publishing of the draft pretreatment rule. DEC is currently investigating funding mechanisms through the Clean Water State Revolving Fund and other loan or grant programs, equipment and cost sharing models, and financial support through contracts.

DEC agrees with concerns raised regarding POTWs performing inspections of SIUs, therefore, this proposal has been struck from the Pretreatment Strategy.

Comment 2: *General observations – It is noted on Lines 40-41 "...that details DEC, POTW, and industrial user responsibilities." that this strategy will require a sharing of responsibility between the State, POTWs and industrial users. However, I do not see any responsibilities of the industrial user mentioned anywhere in this document. In order for this to be successful there needs to be a shared responsibility of each party. To this, I would suggest that the additional proposed responsibilities for the industrial user be stated in this document. For instance, will there be increased fees to assist in administering this program. After all they do hold a NPDES permit*

Response 2: DEC agrees that shared responsibility on all parties is critical for the implementation of a successful program. The Pretreatment Strategy is a response to EPA's audit findings on several specific elements of the state's program. Therefore, the strategy did not expand on the details associated with specific requirements for industrial users.

However, DEC hopes to incorporate specific industrial user requirements and responsibilities within its draft pretreatment rule. Examples of these requirements include facility operational requirements, controls for slug discharges, requirements for pollution prevention and high-strength waste management, industry sector specific requirements, wastewater monitoring and sampling requirements, etc.

Comment 3: *Lastly, I appreciate the efforts of DEC to include the stakeholders in the discussion and efforts to keep the pretreatment program at the State level. My hope is that this effort continues throughout the entire process. The goal should be that at the end of this process the POTWs do not walk away feeling as though this was something forced upon them.*

Response 3: DEC will continue to consult stakeholders to obtain feedback on its draft rule, procedures, and training materials, with the goal of developing a program that will be effective for communities throughout Vermont.

Commenter E: Erik Bailey, Director of Utilities & Facilities, Town of Hinesburg

Comment 1: *Hinesburg 100% concurs with Randy Bean's comments in their entirety. Most importantly, POTWs cannot be used as the regulators & Inspectors. That is the job of DEC.*

Response 1: Please refer to DEC's response to Commenter B.

DEC has struck the requirement for POTWs to perform SIU inspections.

Further, DEC is retaining full control authority of the pretreatment program in accordance with 40 C.F.R. § 403.10(e), and DEC will continue to carry-out major program tasks such as permitting, inspections, some industrial user sampling, review of process wastewater discharges from new or expanding industrial users (determinations), assistance to municipalities on management of industrial discharges, and enforcement.

Commenter F: Edward Farrar Utility District (EFUD, Waterbury WWTP and Collection System)

Comment 1: *Because the EFUD is in the process of developing its own PTP beyond our existing S.O., we are not sure if using the State developed PTP would be more advantageous. It also appears the State proposed PTP is slanted more toward IU's and it is not clear if the definition of a 'Non-Industrial User' would include commercial establishments, such as restaurants, which for most small Vermont towns, is more of a concern for the EFUD. Will the State PTP apply to these commercial establishments beyond a local S.O.? Would there be enforcement by the State for non compliance?*

Response 1: DEC's pretreatment program will continue to primarily focus on the regulation of discharges from sewer users that introduce non-domestic wastewater to a POTW. These are referred to as industrial users.

Significant industrial users (SIUs) receive the most attention and are regulated directly by the program via individual permitting, inspections, sampling, and compliance monitoring.

Non-significant industrial users are governed by EPA's General and Specific Prohibitions and Vermont statute 10 V.S.A. § 1259. Vermont's statute prohibits sewer users from introducing wastes to a POTW that interferes with, passes through without treatment, or is otherwise incompatible with the treatment works.

DEC's regulations of non-significant industrial users is much more indirect than its approach to managing SIUs. To a certain degree, DEC's relies on the local POTW to control discharges from non-significant industrial users through a sufficient sewer use ordinance. However, as always, DEC is available to provide assistance and guidance to POTWs on the proper management and control of these discharges. In addition, DEC has and will continue to perform enforcement on discharges that cause direct upset, failure, pass-through, or substantial adverse impact at a POTW.

DEC does not have the capacity to regulate non-significant industrial users directly via an individual control mechanism, such as a permit. Therefore, DEC's proposed changes to the pretreatment program continue to rely on local control through a sufficient sewer use ordinance. However, DEC will consider incorporating changes in its draft rule to support POTW's needs for regulating non-significant industrial users. For example, DEC is considering draft rules applicable to all non-significant industrial users, such as

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

requirements for slug discharge control plans, waste management plans, oil and grease management, etc. In addition, DEC will consider rules to support the POTW's implementation of a fats, oils, and grease program.

Comment 2: *It also does not seem feasible, due to the timing, to try to add any PTP requirements in the 2020 permit renewal phase, at least for this permit renewal period. We would not be in favor of rolling the SIU's into the new draft discharge permit at this time, due to the increase of constituent monitoring requirements that are being added to the proposed permits.*

Response 2: Currently, DEC is not proposing pretreatment requirements for POTWs until following a final pretreatment rule.

Comment 3: *Staffing is also an issue. Since the DEC's goal is to collect 100% of required independent compliance and sampling, when will the State know if funding will be available to the POTW's to achieve this 100% goal as stated on page 6 under 'DEC PTP Resources'? This will be a determining factor on the level of many POTW's ability to commit to the program.*

Response 3: Please refer to DEC's response to Commenter A and Comments 4 and 5 of Commenter B for a discussion on costs and staffing associated with POTW implementation of pretreatment support tasks.

Comment 4: *The EFUD would favor adopting and supporting the DEC's implementation of the Pretreatment Program if it would assist us in achieving more compliance from the local businesses. We will need to have further clarification on the 5 POTW support activities (page 5). If we would have difficulty achieving compliance through our users, what sanctions would there be from the State for failing to meet the PTP requirements, A. on the users, and B. on the POTW?*

Response 4: The development of a sufficient sewer use ordinance and supporting DEC's development of technically based local limits will not require compliance by industrial users. These tasks are performed exclusively by the POTW.

Tracking existing and expanding industrial users will require industrial users to provide sufficient information to the POTW in a timely manner, so the POTW can determine whether or not a user discharges non-domestic wastewater. DEC can support the POTW with implementation of this task by providing training and guidance to the POTW on performing industrial user surveys and templates for tracking sewer connections. However, DEC will hold the POTW responsible for obtaining the appropriate information from their industrial users to satisfy the pretreatment support task.

Annual independent compliance sampling of SIUs will also require the cooperation of the SIU in cases where the effluent sampling location is on the user's property. DEC will expect that POTWs have sufficient "right of access" authority within their sewer use ordinance to perform this sampling. However, if the SIU adamantly refuses the POTW's right of access, DEC can provide support for implementation and/or enforcement.

In general, pretreatment support tasks will be included as conditions within a POTW's NPDES permit for those POTWs which meet DEC's implementation criteria. Please see DEC's responses to Commenter A and Commenter B for more information on DEC's anticipated implementation criteria.

If a POTW is required to perform a pretreatment support task, they will have reporting requirements specified in the applicable NPDES permit condition. DEC will monitor compliance with the NPDES permit condition by determining whether or not a POTW submitted the requirement in accordance with the reporting schedule specified in the permit. DEC will review POTW submittals to determine whether or not they satisfy the entirety of the permit condition. If DEC finds the POTW does not satisfy a permit condition, they will notify the POTW and request revisions. If compliance with the permit condition is not achieved, the POTW may be subject to Significant Non-Compliance, a Notice of Alleged Violation, and/or further enforcement action.

Comment 5: *Also, regarding independent compliance sampling, again, since the EFUD has few (i.e. Krueger/Dr. Pepper in old GMCR complex) known additional IU's, our greatest benefit from the PTP would be to target the one Brewery and the restaurants in the Village, but I don't see much emphasis placed on monitoring commercial establishments in the PTP. The EFUD S.O. already requires building sampling ports and access, but few have them installed. Would the program now want local S.O.'s to be more rigorously enforced and place the independent sampling responsibility on the owners?*

Response 5: The annual independent compliance sampling as part of DEC's pretreatment program is only required for DEC classified SIUs. Therefore, independent compliance samples would not be required of any non-significant industrial users, such as most commercial establishments.

Comment 6: *The problem we face is that, regarding mitigating FOG, the majority of the establishments in the EFUD have undersized grease traps and interceptors even though they perform routine pumping and appear to be composting food wastes. We already are receiving push back from the owners regarding the financial hardship upgrading their grease traps would cause. This would require the EFUD to possibly consider grants and business loans to assist with these upgrades. Due to the Covid shutdown, the EFUD, like many other municipalities, are strapped for revenue. For example, nearly \$100,000 of Sewer/Water charges were forgiven by the EFUD. Will the State have access to or make available grants or loans to either the users or the POTW's?*

Response 6: The changes proposed in DEC's Pretreatment Program Strategy do not touch upon POTW-run FOG programs. However, during pretreatment rule development, DEC will consider incorporating conditions that can support POTW's needs for implementing a successful FOG management program.

With respect to funding, DEC recommends that facilities investigate whether funding for FOG program planning is eligible through the state's Clean Water State Revolving Loan Program.

There may also be a few eligible programs to fund the installation or upgrade of grease traps at private businesses. For example, municipalities can receive money from the Clean Water State Revolving Loan Fund to pass-through funds to privately owned businesses for applicable wastewater projects. In addition, EPA's pollution prevention grants frequently award opportunities focused on the reduction of wastes which cause adverse impact to WWTFs or can be diverted from landfills.

DEC will explore viable methods to fund or provide financial support to POTWs for costs associated with the implementation of the proposed pretreatment support tasks. Some of these opportunities may be appropriate to implement FOG reduction.

Comment 7: *The 2 IU's in the EFUD system with pretreatment permits are consistently in compliance and meeting permit limits. The challenge we face comes from restaurants and one brewery that is not fully implementing side streaming. Recently, we have hired RAH consulting services to assist us in finalizing our updated Sewer Ordinance and to assist us in inspections and monitoring. Although the Covid-19 shutdown temporarily suspended the inspections, it has not stopped the sampling from 3 suspected contributors of high strength loadings and FOG. The 'shutdown' has also allowed us to perform a 3 week total system analysis of loadings which we have seen a 37% reduction in BOD. Another matter to consider is the increased cost due to either in-house or outside laboratory testing. As already mentioned, the increased constituent monitoring, QA/QC services or DMR-QA's now required in the 2020 discharge permits is straining already meager budgets if funding was not available.*

Response 7: The collective impact of multiple smaller industries is a challenging issue for the state pretreatment program to manage. DEC will be considering rules to support the POTW's regulation of non-significant industrial users, such as wastewater management requirements applicable to all businesses within specific industrial sectors. DEC will consult stakeholders during rule development to determine the best strategy for the program and POTWs to collectively manage these situations.

Comment 8: *Would like to thank the State for all the diligence and hard work that has been already done with this program.*

Response 8: DEC acknowledges this comment.

Commenter G: Penny Jones, Manager, Village of Morrisville Water & Light Dept.

Comment 1: *Morrisville Water & Light has contracted with Randy Bean over the past few years. I would concur with his comments. I will be posting some of his comments I feel are most important. I would add I struggle that the State is basically cost shifting from a state level down to the municipal level. I believe pushing it to the municipal level will be more costly as each municipal will need to incur costs to train and stay on top of all of the rules & regulations. It makes more sense to keep this at a state level. Even if more employees need to be hired at the state level.*

Comment 2: *In some areas, the POTW might have a strained relationship with the businesses. Moving authority to the local POTW doesn't help with an "independent, third party view or inspection" This affects the local relationship even more.*

Response 1 & 2: Thank you for your individual comments, in addition to your reference to and support of comments 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, and 14 from Commenter B.

DEC has addressed your comments related to cost in its response to Commenter A and Commenter B (particularly Comment 4).

With respect to moving authority, DEC's strategy as proposed does not delegate authority to the local POTW for permitting, regulation, inspections, or enforcement. DEC will retain its status as control authority in accordance with 40 C.F.R. § 403.10(e) and

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

continue to administer major pretreatment program elements, including permitting, inspections, most industrial user sampling, review of process wastewater discharges from new or expanding industrial users (determinations), providing assistance to municipalities on management of industrial discharges, and performing enforcement.

Commenter H: Mike Schramm, Project Manager, City of Burlington

Comment 1: Lines 66-68, we are interested in seeing draft version of proposed requirements and have ability to review and provide input during development.

Comment 2: Lines 134-135, we are interested to see example MOU and have ability to review and provide input during development.

Response 1 & 2: DEC's requirements for POTW's wishing to voluntarily develop their own pretreatment program will be based on the federal pretreatment regulations and associated guidance, including:

- Title 40 Code of Federal Regulations (CFR) Part 403 (see 403.8, 403.5(c-d), 403.9, & 403.11)
- EPA Guidance Manual for POTW Pretreatment Program Development
- EPA Procedures Manual for Reviewing a POTW Pretreatment Program Submission
- EPA Local Limits Development Guidance
- EPA Legal Authority Checklist

DEC will provide example MOUs currently employed by other states for your reference.

DEC will develop an MOU in full collaboration with any POTW interested in developing its own pretreatment program. However, DEC will expect any POTW program be developed and operated in accordance with the federal pretreatment program regulations cited above.

Comment 3: Page 8, Implementation Schedule, Work on Pretreatment Rule, Accommodate POTWs interested in developing municipal Pretreatment Programs; Potential for these identified dates to have impact on City's IPP program development schedule. City is currently under contract with Consultant for IPP Development services to be complete by the end of 2020.

Response 3: DEC can develop and enter an MOU agreement to accommodate a POTW pretreatment program in advance of the implementation schedule proposed within the Pretreatment Program Strategy. However, DEC is unable to transfer its pretreatment permitting authority to a municipality without an amendment to 10 V.S.A. § 1263. Therefore, DEC will retain SIU permitting responsibility in any POTW program MOU prior to such an amendment. Prior to statutory amendment, the POTW can be authorized to carry out all other pretreatment program activities.

Commenter I: James Jutras, Water Quality Superintendent/Chief Operator, Village of Essex Junction

Comment 1: Industrial and commercial discharges in VT have changed substantially with the spread of microbreweries, distilleries and value added food manufacturing. ANR must retain responsibility of the program and serve as a technical and regulatory support to the local treatment facility. Their state wide knowledge of industrial/commercial installations will be invaluable to municipal review of projects. Clarify/delineate responsibility and hand off points to the municipalities in the rule development.

Response 1: DEC is retaining full control authority of the pretreatment program in accordance with 40 C.F.R. § 403.10(e), and DEC will continue to carry out major program tasks such as permitting, inspections, most industrial user sampling, reviewing process wastewater discharges from new or expanding industrial users (determinations), providing assistance to municipalities on management of industrial discharges, and performing enforcement.

The fundamental basis for the proposed changes to pretreatment program is (1) consistent identification and classification of industrial users, (2) clear delineation between local and state jurisdiction, (3) the development of legally enforceable, technically based conditions to protect POTWs, the quality of their residuals, and VT's receiving waters, and (4) consistent regulation and requirements for industrial users across the state. Part of DEC's pretreatment goals are also to assist municipalities by encouraging good WWTF operation and management through educating POTWs on the importance of:

- Identifying and tracking the industrial users connected to the WWTF;
- Understanding the types and volumes of pollutants being introduced to the WWTF;
- Understanding the WWTF's capacity to treat incoming pollutants; and
- Knowing the amount of reserve capacity remaining to accommodate community growth while maintain proper operations.

Response Summary for the Department of Environmental Conservation's Pretreatment Program Strategy

DEC plans to clearly delineate POTW and state program jurisdiction within its draft rule and implementation procedures.

Comment 2: *This programmatic initiative needs to consider development of a model Universal Ordinance to aid the ANR and the local Water Resource Recovery Facility (WRRF). This step was taken in the mid 1980's when many facilities were constructed and improved significantly.*

Response 2: DEC plans to publish a model ordinance for POTWs to reference or utilize to meet sewer use ordinance requirements. DEC will consult stakeholders and partners (Vermont Rural Water Association, Green Mountain Water Environment Association, Vermont League of Cities and Towns, etc.) for input and feedback during the development and distribution of this guidance.

Comment 3: *A technical basis with numerical standards should be included, where possible, to support permit compliance enforcement. The current review process may no longer fit some larger facilities serving multiple communities and a high density of commercial/industrial customers. Water Resource Recovery Facilities (WRRF's) and individual community loading should be considered as well as the overall plant load and process flow. In other words, available organic capacity in our current facilities is equally important to the proposed discharge and its impact on the plant as a whole.*

Response 3: DEC agrees with this comment and will propose a technically based, legally defensible approach to developing local limits. An outline of DEC's proposed method is presented in the response to Comment 12 of Commenter B.

Comment 4: *Many/most municipalities are willing to work with state permit process without direct delegation of the permit and responsibilities to the municipality. Clear delineation of responsibility should be inserted into any DRAFT rule development. A shared right of entry to facilities should be included in any permit or ordinance. Rules developed must allow flexibility to meet the local needs. (i.e. Total P may be a bigger issue for one WRRF, organic load or ammonia load to another)*

Response 4: DEC agrees with this comment and will propose a draft rule that clearly defines POTW and DEC responsibility, and allows for flexibility to meet the needs of the local POTW.

With respect to sewer use ordinances, DEC's intent is to ensure POTWs can carry out activities necessary to control and manage discharges from industrial users that DEC does not regulate (non-SIUs). In addition, the ordinance should allow POTWs to implement practices necessary for DEC to conduct its permitting program, such as establishing design capacity, issuing allocations, managing reserve capacity, and identifying and tracking industrial users.

Comment 5: *Municipalities absorbing the pretreatment program locally may require additional staff to monitor and enforce program changes. This should be an option for the municipality to consider depending on their service area, not a transferred requirement from the state.*

Response 5: DEC does not intend to require any POTW to adopt their own pretreatment program. That said, DEC supports and encourages any POTW who wishes to voluntarily administer their own pretreatment program in lieu of the state's, so long as the POTW demonstrates its ability to do so in accordance with applicable regulations. DEC will accommodate any POTW program through a memorandum of understanding (MOU). The MOU will establish roles and responsibilities of the POTW and DEC pertaining to administration of the municipal program.

Comment 6: *It is unclear as to whether there may be new NPDES Discharge permit conditions when this program revision rolls out. Please have this discussion with stake holders early on in the rule making process.*

Response 6: DEC is proposing two new NPDES permit requirements for supporting the development of TBLLs and annual independent compliance sampling of SIUs. In addition, DEC is proposing to revise two existing NPDES permit requirements pertaining to municipal sewer use ordinances and tracking industrial users. DEC will consult stakeholders on these proposed changes throughout the development of its draft rule.

Comment 7: *Many benefits of pretreatment review are listed in the document. Please add the protection of sludge and biosolids quality.*

Response 7: The protection of sludge and biosolids quality is a fundamental component of the pretreatment program and has been added to the Pretreatment Program Strategy.

Commenter J: Bruce Hoar, Town of Williston

Comment 1: *Additional comment from Williston along with supporting all (comments from Essex Junction) above.*

There needs to be a nexus in the State WW permit that allows competing municipalities to consider commercial and industrial users to connect under the State permit conditions for all. In other words if a high strength producer wants to connect the rules should be identical under the State WW permit to such an extent that the burden is on the user and not the system or WWTF."

Response 1: DEC is in agreement with this comment and will consider incorporating specific industrial user requirements and responsibilities within its draft pretreatment rule to support the fair and consistent regulation of industrial users throughout the state. Examples of these requirements include facility operational requirements, controls for slug discharges, requirements for pollution prevention and high-strength waste management, industry sector specific requirements, wastewater monitoring and sampling requirements, etc. In addition, DEC will consider incorporating draft rules to support POTW's needs for regulating industrial users that fall outside state jurisdiction. For example, DEC will consider rules to support the POTW's implementation of a fats, oils, and grease program.